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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			HOLZEN, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3644	
DATE MAILED: 05/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/812,018

Applicant(s)

PATERRO, VON FRIEDRICH C.

Examiner

Stephen A. Holzen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-24 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-24 and 26-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/21/2006 have been fully considered but they are not persuasive.

2. Applicant has argued that his invention has a credible or well established utility.

The examiner disagrees. Applicant defines his invention as

a. using magnet to cancel gravity's effect caused by earth's atmosphere.

(see ¶0003, 0019, 0059)

b. levitate the craft with magnets(¶0014)

c. creating a magnetic force, greater than that of the earth and using this force to "propel the craft outward" (¶0064)

d. when both upper and lower plates are adjusted to the same polarity a magnetic levitation can be realized to supplement vertical thrust

An invention has a well-established utility if (i) a person of ordinary skill in the art would immediately appreciate why the invention is useful based on the characteristics of the invention (e.g., properties or applications of a product or process), and (ii) the utility is specific, substantial, and credible. It is not credible that applicant can levitate the craft (see paragraph 14) which is the purpose of "controlling the electromagnetic field around at least portion of the hull to magnetically curve the space adjacent the hull" (see Claim 1).

3. The applicant then goes on to argue that a second embodiment of his invention has credible utility in outer space. The examiner disagrees. "Controlling the electromagnetic field around at least portion o the hull to magnetically curve the space adjacent the hull" will not serve to propel the craft through outer space. This is not a believable assertion, which would be required for utility to be established. The craft would be have to have such a large magnetic repulsive force (to create motion in space) that the examiner does not believe that such a magnet (or electromagnetic force) could be build, used and transported to space. This second embodiment lacks a credible utility since applicant's invention does not serve a practice purpose.

4. The examiner will not require the applicant to submit a working model, however, the applicant is welcome at any time to submit a working model to the office.

5. In response to applicant's arguments: Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

e. The examiner would like to respond to a few of the points made by the applicant, even though applicant's response does not clearly point out the patentable difference between the claims (specifically the independent claims) and the prior art.

f. Applicant has argued that Blackburn is not saucer-shaped. However applicant has not provided a specific definition of what all is meant and encompassed by saucer-shaped. This phrase is broad and encompasses anything has "a round shape like a flat circular plate."

g. The applicant has argued that the prior art references can not "change polarity". It should be appreciated that the applicant's functional language in the claims do not serve to impart patentability. While features of an apparatus may be recited either structurally or functional, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987). In this case applicant's claim language is merely functional and does not serve to limit the structure of the craft. Broadly the prior art only need to be capable of changing polarity.

h. The examiner did not reject claim 10 over Cox alone and therefore applicant's arguments that Cox does not disclose magnets on the bottom of his saucer shaped craft are moot.

Claim Rejections - 35 USC § 101

6. Claims 1-3, 5-24 and 26-31 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well-established utility.

This invention relates to a craft that can be propelled through a magnetically curved space. More particularly, the inventive craft has a hull built of electromagnets that generate a controllable electromagnetic field around the craft capable of reducing pressure forces acting on the craft. Specifically the applicant has asserted that the electromagnetic field around the craft will cancel the effects of atmospheric pressure and will reduce the gravitational pull from the earth (see ¶¶0001 & 0002 & 0003 of the specification). The current invention does not have a credible utility.

Claims 1-3, 5-24 and 26-31 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,6,10,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn et al (5,797,563). Blackburn et al disclose a flying craft (20), comprising: an exterior hull (30) defining an exterior craft surface of a predetermined surface area at least one propulsion source (112); and an electrical generator (14), wherein the hull includes a plurality of sectionalized electromagnetic plates (Figure 13, illustrates "plates" that contain coiled wires #96) that produce a magnetic field, see also Col. 16, lines 36-49), the electromagnetic core operatively coupled to the electrical generator (via #95) to provide an electromagnetic force to each plate of a given magnitude and polarity (#14), the electromagnetic plates collectively forming a substantial portion of the exterior craft surface (see Figure 12) to provide a controllable electromagnetic field around at least portions of the hull to magnetically curve the space adjacent the hull (see Figures 2, 3, and 12). Figure 13 illustrates sectionalized electromagnetic plates on the upper and lower hulls while Figure 3 illustrates a saucer shape, as well as the collective polarity of the upper and lower surfaces are the same, wherein the craft is submersible water craft (see Col. 5, lines 51-54). Blackburn discloses that the "plates" in figure 13, and it is the examiner's position that these plates are independently changeable between North and S polarity and the magnetic flux density vectors 197 of the generated magnetic fields are illustrated as #197.

9. Claims 1, 2, 3, 5-7, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox (4,891,600). Cox discloses a craft (see Figure 38), comprising: an exterior hull (see Figure 38) defining an exterior craft surface of a predetermined surface area' at

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least one propulsion source (914 is a generator that creates electro-dynamic behavior; it is a source of propulsion); and an electrical generator (912), wherein the hull includes a plurality of sectionalized electromagnetic plates (904, 906), each of the plurality of electromagnetic plates including an outer wall and an inner wall (Figure 38) fixedly provided on an electromagnetic core (910), the electromagnetic core including at least one turn of coil (see Figure 38, #910 and #912) operatively coupled to the electrical generator to provide an electromagnetic force to each plate of a given magnitude and polarity, the electromagnetic plates collectively forming a substantial portion of the exterior craft surface (see Figure 38) to provide a controllable electromagnetic field around at least portions of the hull to magnetically curve the space adjacent the hull, wherein the electromagnetic plates extend around the periphery of the hull of the craft (see Figure 38, #904 and 906), wherein the electromagnetic plates extend radially around the hull of the craft (see Figure 38, #904 and 906), wherein the craft is a flying craft (see Figure 38), wherein the flying craft has a saucer shape with an upper hull portion and a lower hull portion (see Figure 38), wherein the electrical generator includes at least one high frequency oscillator (860). Cox teaches plates (904) that are used to generate a polarization current body force acting vertically. The plates cover the full diameter of the vehicle and store electrical energy which is cyclically converted into magnetic field energy of the coil (900). The plates inherently have their polarities altered since this would be the only way in which non-movable plates can convert magnetic field energy from stored electrical energy. (see Col. 39, lines 42-65)

- i. Re – Claim 5: Cox's electromagnetic plates are inherently capable of being adjusted to the same polarity as the Earth's closest magnetic pole.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8, 9, 14 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable of Cox in view of Paterro (6,367,739). Cox discloses every aspect of the present invention except where the aircraft has the propulsion system described in these claims. Paterro has disclosed that the claimed propulsion system is well known in the art. (Note: The applicant's own patent is being used against him. Patent '739 published more than 1 year prior to the filing the current application, and therefor is not disqualified under 103(c).) Paterro ('739) discloses every aspect of claims 8, 9, 14 and 31. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the propulsion system of Paterro in the aircraft of Cox for the purpose of providing a redundant propulsion system to prevent the aircraft from crash landing in the case where the electromagnetic system fails. Inherently the exhaust system is "compound" in that it consists of two or more substances, ingredients, elements, or parts

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12. Claims 16, 17, 18, 19, 21, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Paterro and further in view of ordinary skill in the art.

Re – Claim 17, 18, 19, and 22: Cox discloses every aspect of the electromagnetic propulsion system as claimed. Cox discloses every aspect of the present invention except where the aircraft has the propulsion system described in these claims.

Paterro has disclosed that the claimed propulsion system (including the quantum jets, the number of jets, their orientation, and location) is well known in the art. (Note: The applicant's own patent is being used against him. Patent '739 published over 1 year prior to the filing the current application, and therefor is not disqualified under 103(c).) Paterro ('739) discloses every aspect of claim 17 and it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the propulsion system of Paterro in the aircraft of Cox for the purpose of providing a redundant propulsion system to prevent the aircraft from crash landing in the case where the electromagnetic system fails.

Neither Cox nor Paterro disclose an upper and lower hull portion having plurality of sectionalize electromagnetic plates.

The courts have held that that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.* 193 USPQ 8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use electromagnetic plates on the upper and lower hulls since doing so would increase the controllability of the craft in outer space (where there is no up, down, left or right) and increased control is an absolute necessity.

Regarding applicant's amendment to claim 17 and 18: The applicant's claims only previously required that the plates be "provided on" the upper and lower portions, which Cox broadly discloses (at least indirectly). Cox does not however teach an upper and lower hull that "includes a plurality" of plates on the lower surface. Therefore the examiner withdrew the previous rejection and provides the above rejection in its place.

Re – Claim 16: Cox electromagnetic plates are inherently capable of being adjusted to the same polarity as the Earth's closest magnetic pole

Re – Claim 21: wherein a collective exterior surface area of the electromagnetic plates is about one half of the surface area of the hull (see Figure 13 to Cox, the bottom surface is not covered by plates),

Re – Claim 27 (which was to be dependant from claim 17): Paterro discloses that non-fissile fuel engines are well known in the art. (see Col. 3, lines 33-34).

13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox as applied to claim 20 above, and further in view of Walmsley (2003/0127559). Cox discloses that it is known to have electromagnetic plates on the upper hull portion

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extending from substantially the pinnacle of the hull to an outer periphery of the upper hull surface. Cox does not disclose a cockpit at the top of the hull. Walmsley discloses that it is known in the art to adapt a VTOL aircraft to have a flight deck centrally on the upper hull portion above a turbine (7). (see Figure 1). It would have been obvious to one having ordinary skill in the art to include the flight deck for the purpose of controlling the aircraft manually. Further it would have been obvious to locate the flight deck at the central top of the hull for the purpose of symmetry and balance.

14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Paterro (as applied to claim 1) and further in view of ordinary skill in the art. Cox in view of Paterro do not disclose the location nor the shape of the high frequency oscillator. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the oscillator in the form of a ring or alternatively between adjacent electromagnetic plates since it has been held that merely rearranging of the working parts of a device involves only routine skill in the art. In re Einstein 8 USPQ 167.

15. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Paterro and further in view of ordinary skill in the art. Cox in view of Paterro do not disclose the location nor the shape of the high frequency oscillator. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the oscillator in the form of a ring or alternatively

between adjacent electromagnetic plates since it has been held that merely rearranging of the working parts of a device involves only routine skill in the art. In re Einstein 8 USPQ 167.

16. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Paterro and further in view of Walmsley and further in view of ordinary skill within the art.

Cox discloses every aspect of the claimed electromagnetic system (as discussed above in Paragraph 3). Paterro discloses every aspect of the claimed fuselage shape and propulsion source in his own patent: US 6,367,739.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the propulsion system of Paterro in the aircraft of Cox for the purpose of providing a redundant propulsion system to prevent the aircraft from crash landing in the case where the electromagnetic system fails.

Cox further discloses that it is known to have electromagnetic plates on the upper hull portion extending from substantially the pinnacle of the hull to an outer periphery of the upper hull surface. Cox does not disclose a cockpit at the top of the hull. Walmsley discloses that it is known in the art to adapt a VTOL aircraft to have a flight deck centrally on the upper hull portion above a turbine (7). (see Figure 1). It would have been obvious to one having ordinary skill in the art to include the flight deck for the purpose of controlling the aircraft manually. Further it would have been obvious to

locate the flight deck at the central top of the hull for the purpose of symmetry and balance.

Both Cox and Paterro disclose a frequency oscillator however do not disclose the location nor the shape of the high frequency oscillator. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the oscillator in the form of a ring or alternatively between adjacent electromagnetic plates since it has been held that merely rearranging of the working parts of a device involves only routine skill in the art. In re Einstein 8 USPQ 167.

Neither Cox nor Paterro disclose an upper and lower hull portion having plurality of sectionalize electromagnetic plates.

The courts have held that that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co. 193 USPQ 8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use electromagnetic plates on the upper and lower hulls since doing so would increase the controllability of the craft in outer space (where there is no up, down, left or right) and increased control is an absolute necessity.

Regarding applicant's amendment to claim 17 and 18: The applicant's claims only previously required that the plates be "provided on" the upper and lower portions, which Cox broadly discloses (at least indirectly). Cox does not however teach an upper and lower hull that "includes a plurality" of plates on the lower surface. Therefore the examiner withdrew the previous rejection and provides the above rejection in its place.

17. Claims 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Paterro. Cox discloses a craft (see Figure 38), comprising: an exterior hull (see Figure 38) defining an exterior craft surface of a predetermined surface area' at least one propulsion source (914 is a generator that creates electro-dynamic behavior; it is a source of propulsion); and an electrical generator (912), wherein the hull includes a plurality of sectionalized electromagnetic plates (904, 906), each of the plurality of electromagnetic plates including an outer wall and an inner wall (Figure 38) fixedly provided on an electromagnetic core (910), the electromagnetic core including at least one turn of coil (see Figure 38, #910 and #912) operatively coupled to the electrical generator to provide an electromagnetic force to each plate of a given magnitude and polarity, the electromagnetic plates collectively forming a substantial portion of the exterior craft surface (see Figure 38) to provide a controllable electromagnetic field around at least portions of the hull to magnetically curve the space adjacent the hull.

Both Cox and Paterro disclose a frequency oscillator however do not disclose the location nor the shape of the high frequency oscillator. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the oscillator in the form of a ring or alternatively between adjacent electromagnetic plates since it has been held that merely rearranging of the working parts of a device involves only routine skill in the art. In re Einstein 8 USPQ 167.

Paterro further discloses a jet that is inherently a sealed quantum jet. The jet is inherently "sealed" in as much as it would not be energy efficient to have a unsealed jet engine.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 703-308-2484. The examiner can normally be reached on M-F 7:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sah

FRANK PALO
PRIMARY EXAMINER

Francis T. Palo